THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17386 OF 2005

DATED: 08-08-2005

BETWEEN;

V.John Ajay Kumar Son of John Kotaiah

..PETITIONER

VS.

The Railway Board,rep.by its Member Staff,New Delhi and two others.

….RESPONDENTS

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.17386 OF 2005

ORAL ORDER

The petitioner claims to be an Additional Joint General Secretary of East Coast Railways Shramik Congress, Waltair Division (for short "the Congress"). The Congress is a registered Trade Union with jurisdiction in East Coast Railways with its headquarters at Bhubaneswar. The petitioner asserts that the Congress is a

recognized Trade Union by the East Coast Railway Administration. The Congress also has a constitution, which delineates the extent of the powers to be exercised by the management of the Trade Union and other incidental matters. The petitioner contends that as per Rule 9 (2) of the Constitution of the Congress, the working committee of the Congress shall ordinarily meet once in every three (3) months or earlier if necessary on a requisition and for this purpose a notice is required to be given for convening the meeting.

The grievance of the petitioner is that the 3rd respondent who is currently the President of the Congress has not acceded to the request of 1/3rd of the members of the working committee, sent up to the 3rd respondent on 28-07-2005 requesting to call for a working committee at Visakhapatnam or any other place within the jurisdiction of the East Coast Railways, exclusively for the Congress and to include certain issues in the agenda. The petitioner also states to have sent a representation on 19-07-2005 to the 1st respondent about the irregular procedure followed by the 3rd respondent in conducting the working committee meeting which the petitioner claims are being conducted outside the zonal Railway jurisdictional areas. The grievance of the petitioner is also that the 2nd respondent by an office order dated 03-08-2005 granted Special Casual Leave for 7th and 8th August,2005 for the to and fro journey periods and issued passes in favour of certain members of the staff mentioned in the office order, who are working committee members of the Congress, to enable them to attend the working committee meeting scheduled to be held at Raipur on 07-08-2005 and 08-08-2005. The substantive grievance of the petitioner is that the 3rd respondent has scheduled the meeting of the working committee of the Congress at Raipur in Chattisgarh State instead of at Visakhapatnam, as requested, or at any place within the operational jurisdiction of the Congress, within the jurisdictional territory of the East Coast Railway Division.

Responding to the objection as to the maintainability of the writ petition, the petitioner relies on the judgments of the Supreme Court reported in *Shri Anadi Mukta Sadguru S.M.V.S.J.M.S.Trust Vs. V.R.Rudani(), Radha Raman Samanta Vs. Bank of India and Others( ), Whirl Pool Corporation Vs. Registrar of Trade Marks, Mumbai and other( ), G.Tele Films Limited and Another Vs. Union of India and others( ).*

It may not be necessary to reiterate in detail the factual circumstances and elaborate the principles laid down in the several judgments relied upon by the petitioner in support of his contention as to the maintainability of the writ petition. Such exercise would be an idle parade of familiar learning at this stage of the matter. Suffice to state that for a Mandamus to issue (that is the relief sought in the writ petition) the respondent to whom the Mandamus is sought should be either a State or an instrumentality of the State. True it is that Article 226 of the Constitution enables a writ, order or direction, *inter alia*, in the nature of Mandamus to be issued to any other authority or even a person but for a writ of Mandamus to be issued in favour of any person, such person must have a legal obligation to fulfill and when he is not an authority being an other authority, must have some trappings of the State or must be performing functionally some duties which have a State characteristic that invites application of public law principles. If the other authority or a person does not fall within any of these principles and the functions that are alleged to be performed by the said authority or person are not public functions, then a Mandamus shall not issue to interdict or mandamise such private functions. The several nuances apparent from the several judgments are in short to the same effect.

In the case on hand, the Trade Union of which the 3rd respondent is a President of the Congress who is alleged to have scheduled a working committee meeting at Raipur instead of at a location within the territorial jurisdiction of the East Coast Railway Division or at Visakhapatnam whereat a meeting of the working committee was requested to be held by the petitioner and some other members. The failure of the Congress in this behalf and by the 3rd respondent as its President does not constitute any violation of public duty nor does the working committee meeting of the Congress constitute the effectuation of public purposes or public duties so as to warrant issuance of Mandamus under Article 226 of the Constitution of India.

On the aforesaid analysis, in the considered view of this Court, the Writ petition is not maintainable. The writ petition is accordingly dismissed. The petitioner is however, at liberty to pursue such available remedies as are advised. No order as to costs.

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GODA RAGHURAM,J

8TH AUGUST 2005

*TSNR